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Chairman: Mr. Mochochoko ..... (Lesotho)
later: Ms. Hallum ..... (New Zealand)
later: Mr. Mochochoko ..... (Lesotho)

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The meeting was called to order at 3.10 p.m.

Agenda item 155: Report of the International Law Commission on the work of its fifty-first session *(continued)* (A/54/10 and Corr.1 and 2)

1. **Mr. Galicki** (Chairman of the International Law Commission) introduced chapter VIII (Unilateral acts of States), chapter IX (International liability for injurious consequences arising out of acts not prohibited by international law - Prevention of transboundary damage from hazardous activities), and chapter X (Other decisions and conclusions of the Commission) of the report of the Commission (A/54/10 and Corr.1 and 2).

2. Referring to chapter VIII, he recalled the second report of the Special Rapporteur on unilateral acts of States, which had stated that the 1969 Vienna Convention on the Law of Treaties was the appropriate frame of reference for the Commission's present work. The Special Rapporteur had also mentioned various issues for the consideration of the Commission, including the unilateral declaration by nuclear-weapon States containing negative security guarantees in the context of disarmament negotiations formulated outside the context of bilateral or multilateral negotiations without the participation of the addressees, the non-nuclear-weapon States; autonomy of the unilateral act; unilateral acts of individual origin, of collective or joint origin; and the declaration as the basic instrument in the law governing unilateral acts. The Special Rapporteur had gone on to examine some questions raised in the Sixth Committee about the relationship between unilateral acts and acts pertaining to international liability, international organizations, estoppel, reservations and interpretative declarations.

3. The Special Rapporteur had introduced draft articles which had served as a basis for discussion. Article 1 concerned the scope of the draft; the others related to the definition of unilateral legal acts (art. 2), the capacity of States to formulate unilateral legal acts (art. 3), the representatives of States possessing authority to perform unilateral acts (art. 4), subsequent confirmation of a unilateral act formulated without authorization (art. 5), the expression of consent (art. 6) and the causes of invalidity of a unilateral act (art. 7). Paragraphs 527 to 576 of the report summarized the debate on the second report, after which the Commission had decided to reconvene the Working Group on Unilateral Acts of States and to appoint the Special Rapporteur Chairman of the Working Group. The Commission had considered the report of the Working Group and had adopted it as amended by the Commission.

4. The task of the Working Group was (a) to agree on the basic elements of a workable definition of unilateral acts as a starting point for further work on the topic as well as for gathering relevant State practice, (b) to set the general guidelines according to which the practice of States should be gathered, and (c) to point the direction that the work of the Special Rapporteur should take in the future. He gave a detailed account of the discussions held by the Working Group as set out in paragraphs 582 to 588 of the report. The discussions covered various elements of the definition of unilateral acts: "legal" (para. 583), "unequivocal" (para. 584), "publicity" (para. 585), "international community as a whole" (para. 586), "with the intention of acquiring international legal obligations" (para. 586) and "autonomy" (para. 587). Following that exchange of views, the Working Group had agreed that the following concept should be taken as the basic focus for the Commission's study on the topic, and as a starting point for the gathering of State practice thereon:

> "A unilateral statement by a State by which such State intends to produce legal effects in its relations to one or more States or international organizations and which is notified or otherwise made known to the State or organization concerned."

It had also been noted in the Working Group that a unilateral statement could be made by one or more States jointly or in a concerted manner.

5. The Working Group and the Commission had also considered the setting of general guidelines according to which the practice of States should be gathered. It had also been suggested that the Secretariat should prepare a typology or catalogue of the different kinds of unilateral acts to be found in State practice. It needed not to be exhaustive but sufficiently representative of the wide variety of that practice. It had been noted, however, that the present sources where such practices could be found were not representative enough, since only some States, and not necessarily from all regional groups or legal systems, possessed up-to-date digests of their international practice. In order to supplement such sources, it had been suggested that the members of the Commission should cooperate with the Special Rapporteur by providing him with materials sufficiently representative of the practice of their respective countries.

6. It had therefore been agreed that the Secretariat in consultation with the Special Rapporteur should elaborate and send to Governments, within a reasonable deadline, a questionnaire requesting materials and inquiring about their practice in the area of unilateral acts as well as their position on certain aspects of the Commission's study of the topic.

7. The questionnaire to be prepared by the Secretariat and the Special Rapporteur would be sent shortly to Governments for their urgent attention. On the basis of the concept of unilateral act defined by the Commission and its Working Group, the questionnaire asked for materials and specific information on the precise categories of unilateral acts, such as promise, protest, recognition, waiver or notification, particularly on the eight elements detailed in paragraph 594 of the report. It also asked each Government to what extent it believed that the rules of the 1969 Vienna Convention on the Law of Treaties could be adapted *mutatis mutandis* to unilateral acts. States were also encouraged to refer to any aspect of their practice in the area of unilateral acts not covered by the questionnaire.

8. Turning to chapter IX of the report, entitled "International liability for injurious consequences arising out of activities not prohibited by international law", he recalled that the topic had been divided into two parts and that the Commission had decided to proceed first with the question of prevention. The draft articles prepared by the Special Rapporteur and circulated to States for their comments would be examined on second reading at the next session. Only two States had forwarded their comments, and those which had not already done so should submit them to the Commission.

9. He summarized the three options that the Special Rapporteur had proposed in his report, regarding the future course of the work on liability; they appeared in paragraph 604 of the Commission's report. Most of the members who had spoken had preferred the second option, which was to suspend the work on international liability until the Commission had finalized the second reading of the draft articles on the regime of prevention of dangerous activities. The Commission would welcome the views of Governments on that specific issue.

10. Lastly, presenting the final chapter, entitled "Other decisions and conclusions of the Commission" (chap. X), he listed some of the most important points, commencing with the relationship between the Commission and the Sixth Committee. In paragraph 10 of resolution 53/102, the General Assembly had requested the Commission to submit recommendations for enhancing the dialogue between the Commission and the Sixth Committee. Several steps had been taken to that end and, in particular, the Commission had identified several issues on which it required comments; they had been highlighted in chapter III of the report, entitled "Specific issues on which comments would be of particular interest to the Commission". The objective was to bring more clarity to the exchange of ideas. It would be recalled that in recent years, several Special Rapporteurs had been able to address the Sixth Committee directly when their respective topic had been under discussion. An indispensable part of the dialogue between the Commission and Governments was the procedure of written comments by Governments in response to particular requests of the Commission. The Commission was aware of the burden on Governments, but remained concerned by the insufficient number of replies and wished to underline the importance of the opinions of Governments from different parts of the world.

11. The second aspect to be underlined related to cooperation between the Commission and other bodies concerned with international law, and the request that the General Assembly had addressed to the Commission in resolution 53/102 that it should further strengthen such cooperation. He said that the Commission was sparing no effort in that regard, and recalled that on various occasions it had held consultations with individual experts on specific topics, either in a formal manner, as in the case of delimitation of the territorial sea of two adjacent States, or informally, as in the case of consultations with experts from the Office of the United Nations High Commissioner for Refugees (UNHCR) on the topic of nationality including statelessness. The Commission had also benefited from the work of a group of experts in Japan, the International Law Association and the American Society of International Law. For many years, the Commission had been exchanging views with experts of the International Committee of the Red Cross on international humanitarian law, which had been useful in the preparation of the draft Code of Crimes against the Peace and Security of Mankind. The Commission also maintained close relations with academic institutions, including the Geneva Institute for International Studies. Many contacts were of an informal nature and had no place in the Commission's report; however, he assured the Sixth Committee that the Commission and its Special Rapporteurs were well aware of the utility of such contacts.

12. The last point on which he wished to call the attention of the delegations concerned paragraph 9 of resolution 53/102, in which the General Assembly requested the Commission to examine the advantages and disadvantages of a split session. The arguments of the Commission, which recommended a split session, were developed in paragraphs 635 to 639 of its report, and he gave a detailed summary of the conclusions.

13. The Working Group on the long-term programme of work would present a detailed report to the Sixth Committee in 2000, where it would propose the programme for the next quinquennium. The work programme for the remainder of

the quinquennium was contained in paragraphs 643 and 644 of the current report.

14. Before concluding, he indicated that the Commission had continued to cooperate with the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee and the Committee of Legal Advisers on Public International Law of the Council of Europe. He also mentioned that the thirty-fifth session of the International Law Seminar had been held at the Palais des Nations from 14 June to 2 July 1999; the Seminar did extremely useful work and it was hoped that the generous contributions of Governments would make a session possible in 2000.

15. **Mr. Yamada** (Japan), commenting on chapter VI of the Commission's report, entitled "Reservations to treaties", said that he appreciated the adoption of the first chapter of the corresponding draft guidelines on first reading; they would fill in the gaps and remove any ambiguities of the 1969 Vienna Convention. Japan believed that the primary objective was to clarify the legal effects of the various unilateral declarations on treaties made by States; consequently, it was useful to define the different types of declaration only when they had a specific and distinct legal effect. He feared that the Commission had undertaken too extensive a project, in view of the large number of subcategories of interpretative declarations that it had identified. Inasmuch as interpretative declarations, whatever their form, did not purport to exclude or modify the legal effect of the provisions of a treaty, there was no need to subdivide them. It was to be hoped that the Commission would re-examine the first chapter when it returned to the question of legal effects.

16. **Mr. Hilger** (Germany) said that his delegation accepted the draft guidelines on reservations to treaties adopted on first reading by the Commission that appeared in chapter VI of its report. However, it should not be forgotten that the majority of real problems generated by the reservations and their consequences, including possible objections and interpretative declarations, did not involve the question of their definition. Germany hoped that once the draft first chapter on definitions had been completed, the Commission would concentrate on finding practical solutions to real-life problems in order to prepare guidelines that truly responded to the needs of practitioners.

17. As to the consequences of inadmissible reservations, it was not completely satisfactory, in the case of a reservation which was clearly excluded under article 19, to relegate them to a system of declarations and objections between parties to a multilateral treaty, as provided in articles 20 and 21 of the Vienna Convention on the Law of Treaties. To sever the prohibited reservation from the rest of an expression by a State of its consent to be bound by a treaty, considering only the reservation as null and void, would cause the State to be bound by provisions which it had expressly excluded from its consent and would contradict the very essence of treaty law. His delegation supported the Special Rapporteur's conclusion that it was always the exclusive responsibility of the State itself to rectify the defect in the expression of its consent. The State had various options: withdrawing the inadmissible reservation, amending it along lines compatible with the object and purpose of the treaty, or refraining from becoming a party to the treaty.

18. Still, the fact remained that the clarification of the incompatibility of a reservation with the object and purpose of a multilateral treaty and its ensuing consequences must be objective. The International Court of Justice had, in fact, earlier stated in an opinion that where a State's reservation was not compatible with the object and purpose of a convention, that State could not be regarded as being a party to the convention.

19. That principle created uncommon difficulties when applied in practice, because in the absence of a body to decide the question of incompatibility, the matter was left in the hands of the States parties. Some States might object to the reservation and declare the ratification or accession null and void. Other objecting States might insist that the reserving State should be bound without limitation. Furthermore, the question arose as to whether, in the case of a reservation contrary to article 19 of the Vienna Convention on the law of treaties, States had to object at all to prevent it from becoming effective. His Government tended to think not, and State practice in the field differed widely. The uncertainty of the current regime with regard to the practical consequences of inadmissible reservations, itself stemming from the Vienna regime, urgently needed clarification.

20. Article 22 of the Vienna Convention provided that a reservation could be withdrawn at any time, and the same held true for partial withdrawals. There was no doubt that modifications of reservations were permitted if they constituted a mere partial withdrawal of a reservation. Problems arose, however, when the modification not only subtracted from the original reservation but also changed its character or scope by adding to it. The United Nations Treaty Section, apparently mindful of the neutral role of the Secretary-General as depositary, refrained from making legal and/or value judgements in such cases. Except in cases of mere partial withdrawals of original reservations, the Secretariat circulated the text of the modification to all States parties concerned and proposed that in the absence

of objections by any of them within 90 days of the date of circulation, the modified reservation should be accepted. The absence of objections was considered by the depositary as amounting to a tacit acceptance by all the States parties concerned.

21. In a case where only one State objected to the modification of a reservation within the 90-day period - which seemed rather short, especially when compared with the 12-month time limit under the Vienna Convention - the question arose as to whether the modification should be considered null and void with regard to all States parties. Such an approach would seem acceptable if the modification constituted an added or new reservation. If, however, the modification amounted to no more than a partial withdrawal of a reservation, which did not require acceptance by other States parties, the objection by only one State party should not be sufficient to block it. Yet the current practice of the Secretary-General as the principal depositary of multilateral treaties led to such consequences.

22. His delegation would welcome it if the Commission could find a solution to the problem, which could then be implemented by the United Nations Treaty Section and also be incorporated in an addition to the Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties (ST/LEG/8).

23. **Ms. Hajjaji** (Tunisia), referring to chapter V of the report dealing with chapters III, IV and V of Part Two of the draft articles on State responsibility, said that the applicable law and the provisions fell essentially under international customary law. The Commission should give further thought to how the various chapters of Part Two hung together, because that could be the cause of a certain inconsistency and undesirable imbalance.

24. Chapter III, entitled "Breach of an international obligation", was the linchpin of all the provisions of the State responsibility regime. However, article 16 of chapter III, dealing with the existence of a breach of an international obligation, required closer study. The text ought, for instance, to take into account the possibility of a conflict of international obligations.

25. In that connection, and in keeping with the normative approach taken by the Vienna Convention on the law of treaties when it established, in articles 53 and 64, the precedence of the peremptory norms of *jus cogens*, her delegation believed the draft articles should contain a provision referring to the hierarchy of norms in international law, which presupposed a definition of *jus cogens* rules. One possibility, as the Commission had proposed, would be to include in chapter I a more general provision on peremptory norms, giving once again the definition in article 53 of the Vienna Convention. That would make it possible to establish a general link between the principle of *jus cogens* and the subject of State responsibility, especially since a number of provisions of the draft articles referred to it directly or indirectly.

26. Chapter IV of the draft articles, entitled "Implication of a State in the internationally wrongful act of another State", was in her delegation's view indispensable to the balance of the draft articles. However, it should be borne in mind that the specific characteristics of international complicity precluded the wholesale application to it of the relevant provisions established under national legal systems.

27. With regard to chapter V of the draft concerning "circumstances precluding wrongfulness", the Tunisian delegation agreed that such circumstances did not preclude the State's commitment to the obligation, since that obligation still existed and since the failure to conform which affected it was limited in time. It was therefore vital to precisely determine the causes exonerating from wrongfulness.

28. Article 29 in that chapter might allow misinterpretation of the excuse of consent. Similarly, with respect to the wording of the first paragraph of that article, which provided that "the consent validly given by a State to the commission by another State of a specified act not in conformity with an obligation of the latter State towards the former State precludes the wrongfulness of the act in relation to that State to the extent that the act remains within the limits of that consent", the Tunisian delegation supported the opinion of the Special Rapporteur, namely that it raised a number of questions and, crucially, that it should be reformulated more clearly.

29. Turning to the topic of reservations to treaties, which was the subject of chapter VI of the ILC report, she stressed the importance attached to the distinction between and the definition of reservations, which involved taking account of the evolution of international law and State practice on the question. She supported the overall framework of the draft which retained the principle of the unity of the regime of reservations and was consistent with and complementary to the Vienna Conventions. She reiterated the importance of studying the issue of extensive reservations and shared the view of the Special Rapporteur that, in the case of a unilateral obligation assumed by the author which went beyond that imposed by the treaty, such an extension should not be considered a reservation.

30. **Ms. Hakkum** (New Zealand), referring to chapter IX concerning international liability for injurious consequences

arising out of acts not prohibited by international law, recalled that at the previous session her delegation had welcomed the adoption by the ILC on first reading of 17 draft articles on the subject. However, her delegation had been seriously concerned about the Commission's decision to separate the two key aspects of the topic into those relating to prevention and those relating to liability.

31. At its fifty-first session, the ILC had decided to suspend consideration of the question pending the second reading of the draft articles on prevention. New Zealand and many other countries would have preferred the Commission to have reconsidered its decision to split its study of those two aspects.

32. The topic had been included on the programme of the ILC since 1978. As delineated by the Commission, it focused on activities carried out within the territory, or under the control or jurisdiction of a State which involved a risk of causing, or actually caused, transboundary harm through their physical consequences. It stemmed from the recognition of a number of key factors and principles, namely: that human activities involving an intervention in the natural order would continue to be pushed to the limits of scientific and technological knowledge; that although the effects of such activities were often positive, they might have harmful consequences, some of which were unforeseeable; that, since the laws of nature did not enable such consequences to be confined within national borders, the recognized principles of international law and State practice provided guidance concerning the international legal framework which should govern them.

33. Prevention and liability formed a continuum beginning with the duty to assess the risks of significant transboundary harm and ending with the obligation to provide compensation if harm occurred. That continuum could be clearly seen from the draft articles submitted by the 1996 Working Group (A/51/10, pages 245 to 327).

34. In its future work, the ILC should maximize the freedom of States to conduct, within their territory or under their jurisdiction or control, activities which were not in themselves unlawful. Accordingly, the draft articles should specify the conditions under which such activities were permitted, even if they involved a risk of causing significant transboundary harm and even if such harm occurred - whether or not those activities had been defined as dangerous. For those conditions to be truly applicable, it was necessary to provide for cooperation between source States, affected States and international organizations, which would enable all appropriate measures to be taken to prevent or minimize the risk of harm. The precautionary principle was relevant in that regard; even if the existence of such a risk had not been established scientifically, preventive measures should be envisaged to avoid any serious or irreversible damage.

35. Moreover, conditions which would allow States the maximum freedom of action should provide for compensation for any harm which might occur despite the preventive measures, or in their absence if the harm had not been foreseeable. Those conditions should prevent affected States, or the international community, from insisting that the State of origin must prevent all possible harm or from prohibiting the activities in question.

36. The inclusion of a right to compensation or relief accorded with two principles: firstly, that States should not permit activities within their territory or under their jurisdiction or control without taking account of their full cost, not only to their own citizens, but also to other States; secondly, that victims in other States should on no account shoulder alone the losses resulting from such activities. If those principles were not followed, the State of origin might enjoy the benefits of such activities while burdening other States with their costs, which would be inefficient and inequitable.

37. The methods by which the State of origin provided compensation, and the factors to be considered in determining its need and extent, should reflect State practice. The draft articles should not impose application of a rule of strict liability to compensate losses resulting from transboundary harm, but should provide for an equitable sharing of costs of activities, as well as of their benefits.

38. The draft articles should require States which eventually became bound by them to assess the risk of their existing activities on an ongoing basis and, if necessary, to provide for the prevention of and compensation for any future transboundary harm. Any compensation or other relief for transboundary harm that had already occurred should be governed by the principles and rules of international law applying at the time when the loss occurred.

39. In conclusion, she recalled that principle 22 of the Stockholm Declaration and principle 13 of the Rio Declaration already called for cooperation to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of States to areas beyond their jurisdiction. The draft articles in the Commission's 1996 report showed that the concept of international liability could be accommodated in international law, which should set at rest the fears of States that had been opposed to its codification and development.

40. She urged all States to support further work by the Commission on all aspects of the topic and stressed the pragmatic advantages of a comprehensive framework convention dealing with both prevention and compensation or other forms of relief.

41. **Mr. Lavalle** (Guatemala), speaking on chapter VI of the report of the International Law Commission, on reservations to treaties, said that each provision of the draft Guide to Practice should be considered in the light of the draft as a whole.

42. The first chapter of the draft Guide was more than simply a catalogue of definitions, as guidelines 1.3.1 and 1.3.2 in particular showed. It would therefore be appropriate to replace the title of the chapter by the words "General provisions" or perhaps "Scope of this Guide".

43. There was also a lack of coordination between guidelines 1.1 and 1.1.1. The latter presented a complete definition of the object of reservations, while the former did not. Guideline 1.1 did not mention "across-the-board reservations" and it might be useful in that guideline to replace the text after "purports to" by "achieve one of the objectives specified in guideline 1.1.1".

44. With regard to draft guideline 1.1.2, the Commission did not explain its reasons for amending the text which appeared in paragraph 540 of its 1998 report (A/53/10); the earlier wording had been much clearer. Moreover, draft guidelines 1.1.5 and 1.1.6 used the words "at the time when" and "when" rather than "in instances, in which".

45. It was cause for concern that draft guideline 1.1.5, which stated the obvious, made the draft Guide more difficult to understand, for the reader had the impression that the draft was introducing another concept in addition to those spelled out in draft guidelines 1.1 and 1.1.1, which was not the case. Furthermore, there was no reason to introduce into guideline 1.1.5 a reference to the appropriate time to make a statement. If the statement in question constituted a reservation, then draft guideline 1.1.2 would apply. To correct those anomalies, draft guideline 1.1.5 should be deleted and the following sentence should be added to draft guideline 1.1.1: "Such modification may consist, *inter alia*, in limiting the obligations imposed by the treaty on the State or on the international organization which formulates the reservation".

46. In draft guideline 1.1.6, the phrase "when that State or that organization expresses its consent to be bound by a treaty" should be deleted. Since that guideline stipulated that the statements to which it referred constituted reservations, the statements in question clearly came under draft guideline 1.1.2.

47. The title of draft guideline 1.6 also seemed too restrictive, as did its content, given that the first chapter of the draft Guide did not deal only with definitions. It could be amended to read:

> "1.6 Scope of the guidelines in this chapter
>
> The guidelines in the present chapter are understood to be without prejudice to the permissibility and effects, under the rules applicable to them, of the statements referred to therein."

48. Lastly, in draft guideline 1.2, the use of the word "attributed" in the fourth line might give the impression that the submission of an interpretative declaration was left to the discretion of States and that the declarant did not need to be convinced that its interpretation was correct. It was true that, in such case, the declarant would be acting in bad faith, which was contrary to law, but an unscrupulous State or international organization might interpret the word literally in order to defend a position that it was not sure was valid. To limit that risk, the wording after "scope" could perhaps be replaced by the following: "which, in the opinion of that State or that international organization, are those of the treaty or of certain of its provisions".

49. In conclusion, his delegation endorsed fully the comments made by the representative of New Zealand.

50. **Ms. Alajbeg** (Croatia), referring to chapter VI of the Commission's report on reservations to treaties, said that the approach taken by the Committee of Legal Advisers of the Council of Europe in the area of reservations which was focused on the preparation of model statements might be suitable for the work of the Commission. Such models could usefully replenish the existing structure consisting of guidelines with commentaries. The future Guide to Practice thus structured, would safeguard legal security and predictability in international relations.

51. Croatia fully supported the baselines on which the Special Rapporteur had built his approach, namely, the Vienna Conventions since their regime for reservations had proved efficient in practice and should not be changed. However, that regime did not provide clear answers to all questions, especially with respect to interpretative declarations. The Commission's work on such declarations, and on their effects, specificity and relationship to reservations, was particularly important and the draft guidelines relating to them were therefore welcome.

52. Her delegation wished to raise the problem of new States which, like Croatia, had arisen from the disintegration

of a predecessor State. At the moment of dissolution, such States had generally assumed the treaty obligations of the predecessor State. In the case of the former Socialist Federal Republic of Yugoslavia, the successor States, notwithstanding the generally recognized continuity of international obligations, had formalized that continuity through notifications of succession in respect of individual treaties. That course of action, however, had proved to have some limitations. A successor State was forced, within a limited period of time to give formal notice of succession to an entire body of treaties to which the predecessor State had been committed, in order to avoid a legal vacuum. However, at that moment, it was often impossible to predict all the implications which succession would have for the implementation of a particular treaty at the national level.

53. In view of the foregoing, her delegation regarded interpretative declarations, as defined by the Special Rapporteur in the draft guidelines and commentaries, as an important instrument for the interpretation and any adjustment of treaty obligations of successor States. The fact that such declarations, unlike reservations, were not strictly linked to the moment when the successor State gave its consent to be bound by a treaty made them a suitable means by which a State, according to the tendencies shown in practice, could give its own interpretation or explanation of the scope or meaning of certain provisions of a treaty or of a treaty as a whole. Such flexibility should allow those States which had taken on the responsibility of their predecessors to examine and interpret the rights and obligations arising from the treaty in question.

54. **Ms. Fernández de Gurmendi** (Argentina), referring to the subject of international liability for injurious consequences arising out of acts not prohibited by international law, which was dealt with in chapter IX of the report under consideration, said that the draft articles on the prevention of transboundary damage approved by the International Law Commission in first reading managed to balance the interests of States which had dangerous activities and those of States which could be affected by them.

55. The work of the Commission should not, however, be limited only to the question of prevention. It would be unfortunate to postpone *sine die* a question as important as the conceptual analysis of the subject and the formulation of rules which would be applicable to it. The violation of the obligation of prevention certainly involved international liability for a wrongful act, but the consequences thereof should also be analysed when there was significant transboundary damage, even when the State of origin of the damage had taken every precautionary measure. Since in such cases the obligation to make reparation was of a special nature, the rules concerning it should comply with certain special principles and supplement the principles relating to responsibility for an unlawful act, for example, the fact that a State had complied with the due diligence requirement did not exonerate it from liability, or the existence of limits to the reparation payable.

56. It would be a contradiction, after having posed the general obligation to prevent transboundary damage and attenuate the risks, not to provide for the consequences arising from any actual damage. It should be remembered that the national legislation of most countries established regimes of absolute liability for the cases covered by the draft articles, in other words for acts which were lawful but dangerous, which were tolerated because they had beneficial effects for society as a whole, even if they could in fact cause damage to private persons. It would also be a contradiction if the damage or risks to which people, material goods or the environment of other countries were exposed were dealt with in the same manner only when they affected the citizens of the country itself. In that connection, her delegation noted that the Commission had so far excluded from the scope of application of its draft articles spaces which were not under any jurisdiction and which were very important for the international community, such as, for example, the high seas. It therefore suggested that the Commission should consider drafting rules dealing with the prevention of damage in such spaces.

57. The Commission asked how it should continue to deal with the subject. Her delegation was prepared to accept that the question of liability for damage should be dealt with after the second reading of the draft articles on prevention. Those articles in fact took up in a general way the practice and case law which existed on the matter and had received general approval. It should not be very difficult to complete the draft articles.

58. Lastly with regard to that chapter, she explained her country's position with regard to the form which the draft articles being worked on should take. Her delegation would hope that the final instrument would be a convention which was general in scope, but it was prepared initially to be satisfied with a series of guidelines, combined in a declaration to guide States which had to conclude bilateral or regional treaties. Having said that, it seemed to her that it was important to avoid overusing too liberal regimes, so-called soft law, which, as the recent trend had shown, reduced to a minimum the effects of that type of instrument. Perhaps that might be seen as a deliberate intention not to go further and to oppose the development and codification of new standards.

59. Turning to the subject of unilateral acts of States (chap.VIII of the report), she said that there was undoubtedly a question whether unilateral acts were or were not a source of international law in the sense of article 38 of the Statute of the International Court of Justice, but it was evident that they could engender international rights and obligations for States. There were four types of unilateral acts: a promise, a waiver, a recognition and a protest, each of which had its own characteristics which the Commission would have to identify and analyse. It would also have to proceed to a detailed study of the case law of the International Court of Justice, which had applied and systematized the existing principles on the subject in a number of its judgments.

60. In paragraph 594 of the report, the International Law Commission posed a number of questions. The first was who had the capacity to carry out a unilateral act on behalf of a State. It was clear that the acts of the Head of State, the head of the Government and the Minister for Foreign Affairs could always be attributed to the State. That international rule was now fully recognized and its importance was fundamental. Since the contemporary world was characterized by the multiplication of communications and relations between institutions and by acts carried out outside the country by agents of the State, it was important to know precisely who could commit the State by a statement or a unilateral act. Moreover, the conclusion of a treaty, an instrument which involved rights and obligations, required the presentation of credentials signed by the Minister for Foreign Affairs unless it was concluded by one of the three aforementioned persons. It was easy to understand that an official, even one at the highest level, could not create international obligations for his State by carrying out a unilateral act. Anything one might want to add to that established rule of customary law would have to be considered from a restrictive angle. The only course was to seek to improve the formulation by taking contemporary international realities into account.

61. The second question dealt with the forms which unilateral acts should take. Neither the practice of States nor case law or doctrine required particular forms. The rule was that the expression of the will of the State should be known by the other States or other subjects of international law concerned.

62. The third question dealt with the possible contents of unilateral acts. Such acts should be intended to produce legal effects, to modify the legal situation of the State carrying out the act and, indirectly, that of the State or States affected by the act. In general, that effect consisted in creating or modifying an obligation or waiving a right under international law. But there were also unilateral acts the purpose of which was to define or clarify legal concepts, as was shown by the history and evolution of certain principles of the law of the sea.

63. Lastly, the International Law Commission inquired about the possible revocability of a unilateral act. In her delegation's view, once the author of a unilateral act had expressed its will, it could not at its own discretion either revise or revoke a promise, a waiver or the act in question. It could obviously subordinate the will thus expressed to the expiry of a time-limit or to the fulfilment of a condition, or state explicitly that it might one day countermand it. Some maintained that, while the possibility of revocation did not fall within the context of the act in question or its nature, a promise or a waiver were in principle irrevocable; others believed, on the contrary, that they were revocable, but not in an arbitrary manner or in bad faith. In any event, it was clear that the legal situation created by a unilateral act could not be immutable: it was subject to general rules such as the principle *rebus sic stantibus*, the exception of *force majeure*, and so on. One might add that certain unilateral acts, such as protest, were in general revocable.

64. Turning to the relationship between the law of treaties and that of unilateral acts, she said that, in her opinion, there were many points of intersection between treaty acts and unilateral acts. Both were legal acts and belonged to the same regime in terms of expression of will, invalidity, conditions of existence, etc. As a result, many of the provisions of the Vienna Convention could be transposed to unilateral acts, but the Commission should not do that automatically. For example, article 6 proposed by the Special Rapporteur was entitled "Expression of consent", a term which did not convey very clearly what was intentional about the act.

65. Nevertheless, there was one area where the rules of the law of treaties and the rules applicable to unilateral acts were of necessity divergent, and that was the area of the interpretation of unilateral acts. As the International Court of Justice had stated in the *Nuclear Tests* cases, the declaration by which a State limited its freedom of action must be interpreted strictly. That was simply a corollary of the celebrated *dictum* of the Permanent Court of International Justice in the *Lotus* case. As with any unilateral legal act, the intention of the author played a fundamental role. It was for precisely that reason that the determining factor constituted by the circumstances of the act, in other words, the context in which the act was carried out, must not be overlooked. Moreover in the *Anglo-Iranian Oil Co.* case, the Court had laid down the rule that the act must be interpreted in such a way that it produced effects that were

in conformity with existing law and not in contradiction to it.

66. In conclusion, the Commission should not limit its analysis to a single category of unilateral acts, such as declarations, but should try to cover all categories. She recalled that the Commission was at the same time studying the major issue of reservations to treaties. Since a reservation was a kind of unilateral act, it would be prudent to ensure coherence between the two drafts.

67. **Mr. Hakapää** (Finland), speaking on behalf of the Nordic countries, said that the topic of unilateral acts of States (chap. VIII of the Commission's report) was no doubt a challenging one for the Commission. There were numberless instances where such acts were a means of conducting day-to-day diplomacy, and they were also the prerogative of sovereign States. On the other hand, it was very difficult to regulate such acts in all their forms. It was obviously acts with legal consequences upon which consideration of the topic should focus. Even so, it was not always easy to distinguish a "legal" act from a "political" act, and that did not facilitate the current exercise.

68. In general terms, the Nordic countries agreed with the concept elaborated by the Working Group as the basic focus for the Commission's study on the topic, as set out in paragraph 589 of the report. In principle, they took the view that the scope of the study should be sufficiently wide and that it should deal with unilateral statements without limiting itself to what the report called autonomous acts not having any other basis in international law. In fact, the Commission's exclusion of unilateral acts subject to special treaty regimes was somewhat questionable, since such acts usually involved practical situations that were in particular need of analysis. With regard to declarations accepting the jurisdiction of the International Court of Justice, however, that exclusion was understandable since it was for the Court itself to decide on its own competence.

69. The Nordic countries concurred with the Commission's suggestion that its focus should be on a unilateral statement made by a State with the intention of producing legal effects in its relations with one or more other States or international organizations. The statement must be made by the competent authorities of the State concerned and must be adequately notified or otherwise made known to the other States or international organizations; that definition should include not only formal declarations but also other types of statements such as promises or waivers of rights and privileges.

70. In practical terms, however, one might question whether such a broad mandate could be assumed from the outset. One alternative that might facilitate expeditious results would be to proceed on a step-by-step basis, starting with statements which created obligations rather than those which were aimed at acquiring or maintaining rights. The scope of the study could be expanded later to include the latter category of statements, taking into account the results of the work on the former.

71. In some cases, also, it seemed that a study of unilateral acts impinged on other, more substantive regimes of international law. For instance, recognition of States might take place by unilateral action, but the conditions and legal ramifications of recognition constituted a celebrated issue of international law which could not be addressed solely with a reference to its mode of action. One might wonder whether such a case should be included in a study of unilateral acts or would be better considered on its own terms as a distinct regime. Similarly, reservations to treaties should be excluded from the scope of the study, since they already appeared as a separate topic on the Commission's agenda.

72. The Nordic countries considered the question of the applicability of treaty law to unilateral statements to be highly relevant. The Special Rapporteur had suggested that many of the provisions of the Vienna Convention could *mutatis mutandis* be applied to such statements, but the differences between the two regimes should not be overlooked. The law of treaties was governed by the principle of *pacta sunt servanda*, which was not to be found at the core of unilateral acts. The Vienna Convention might offer useful guidance in that context, but it could not simply be transformed to apply also to unilateral acts. In fact, the question arose of whether there was a need, or an actual possibility, for detailed regulation of the vast field of unilateral action. The Nordic countries had some doubts about embarking on a project similar to that of the law of treaties in that field. However, it might be useful in general terms to define unilateral acts having legal effects in international law and, in particular, how the principle of good faith should be reflected in the determination of the legal effects of such acts.

73. The Nordic countries noted the questionnaire which the Secretariat had recently distributed to Governments requesting information about their practice in the area of unilateral acts and their position on certain aspects of the Commission's study of the topic. It was to be hoped that the questionnaire would meet with the widest possible response, but Governments might find it difficult to provide all the information requested, as the concept of a unilateral act might be as undefined at the national level as it was at the international level. On the other hand, the response to the

questionnaire should reveal the extent to which the topic actually corresponded to a practical need felt by Governments, since it seemed that the Commission had been entrusted with a task that was perhaps more complex than originally foreseen.

74. **Mr. Keinan** (Israel), referring to paragraph 30 of chapter III of the report, concerning the Commission's questionnaire on reservations to treaties, said that Israel had replied to the questionnaire in 1996 and considered that the cooperation of those States which had not yet responded was essential to the discussion of the topic.

75. Turning to chapter VI of the report, on reservations to treaties, he said that the issue of conditional interpretative declarations covered by draft guideline 1.2.1 was especially relevant in view of the abundance of new treaties prohibiting reservations. His delegation agreed with those members of the Commission who distinguished between conditional interpretative declarations and reservations. The distinction lay not only in the purpose which each was meant to achieve but also in the special nature of conditional interpretative declarations, which did not apply automatically and took effect only if and when the condition in question was fulfilled. His delegation therefore believed that such declarations should not be treated purely and simply as reservations, especially prior to the fulfilment of the condition.

76. Other aspects would have to be clarified if guideline 1.2.1 was to be capable of application, especially with regard to the possible consequences of such declarations: for example, must the declaring State be regarded as a party to a treaty from the standpoint of the number of ratifications required for its entry into force? Who decided that the condition had been met, and when? How were the other parties informed about the status of the declaring party vis-à-vis the treaty?

77. The issue raised by guideline 1.4.3, on statements of non-recognition, was so complicated, especially with respect to the possible legal effects, that the guideline should be removed from the draft Guide. The same could be said of guidelines 1.5, 1.5.1 and 1.5.2, for the practice in the matter was virtually non-existent.

78. **Mr. Dufek** (Czech Republic) said that the main purpose of the Guide was to make a clear distinction between reservations and interpretative declarations. That distinction had remained blurred until now because the practice of States was inconsistent but also because of terminological uncertainties in the law of treaties.

79. At the fifty-third session his delegation had mentioned some difficulties raised by the wording of the draft definition of reservation, which seemed in some parts too vague and did not provide a reliable criterion of the distinction between a reservation and an interpretative declaration. It was therefore pleased to note the results of the Commission's deliberations and drafting work at its most recent session. The current wording of the definitions of reservation and interpretative declaration were satisfactory and represented a good basis for drafting secondary rules.

80. His delegation also supported the inclusion of the cluster of guidelines dealing with the method of applying of the distinction between reservations and interpretative declarations, for it might prove very useful. As the Commission stated in the commentary, the general rule was set out in guideline 1.3.1 and the two other guidelines supplemented that rule. His delegation supported such a categorization but thought that the distinction between a general rule and a supplementary rule should also be emphasized in the text of the guidelines themselves.

81. The commentary to guideline 1.2.1, on conditional interpretative declarations, contained convincing arguments in support of that kind of declaration. Although in fact such unilateral declarations of that kind were close to reservations in terms of their legal effects, and although some members of the Commission had recommended that they should be treated as reservations, his delegation supported the Commission's final decision to include them among interpretative declarations. The Commission had also been wise to reconsider its approach to statements of non-recognition and to retain the idea expressed in guideline 1.4.3, i.e. that such statements could not be taken for reservations or interpretative declarations. Unlike reservations, they did not concern the treaty itself but rather the capacity of the non-recognized entity to be bound by the treaty.

82. His delegation also shared the Commission's view concerning the application of reservations and interpretative declarations in connection with bilateral treaties. In the commentary the Commission had correctly explained that a "reservation" to a bilateral treaty did not have the same legal effects as one made to a multilateral treaty. Its conclusion - that in such cases a reservation was a proposal to amend or renegotiate the treaty in question - seemed to be the only possible one. However, unlike the Commission, his delegation thought that that conclusion should be reflected in guideline 1.5.1 itself. The current wording of the guideline was not sufficiently balanced by the commentary and could be misleading. It might be redrafted along the lines of guideline 1.4.2.

83. **Mr. Crook** (United States of America), commenting on chapter VI of the report, concerning reservations to treaties, said that the Commission's idea of drafting a Guide to the practice rather than a more rigid document had great merit. The Commission had also been wise to adopt on first reading the 18 draft guidelines and their commentaries, which were to constitute the first chapter of the envisaged Guide. The restructuring of the first chapter into six separate sections should facilitate the work of lawyers on the analysis and evaluation of reservations, declarations and interpretative declarations.

84. It was interesting to note that, in its presentation, the Guide differed from the three Vienna Conventions: the rules contained in those instruments constituted their important parts. The Commission's commentary might throw light on the meaning of particular articles of the Vienna Conventions, but States seldom referred to the commentary before citing an article of the Convention. The contrary might be true of the Commission's guidelines, for States might make more use of the commentary than of the guidelines themselves.

85. The Special Rapporteur and his colleagues on the Commission were to be congratulated on the wealth of their sources, which had been augmented by the replies of 22 Governments. Governments now had a comprehensive view of the practice of States in respect of reservations for the first time since the drafting of the Vienna Convention on the Law of Treaties more than 30 years ago. That overview would be a valuable resource for States when drafting the provisions of treaties relating to reservations, declarations and interpretative declarations, when they were considering the possibility of making reservations themselves, or when they had to decide whether to respond to the reservations or interpretative declarations of other States.

86. The definitions establishing separate categories of statement which might be made with respect to a treaty could shape the practice of States if States regarded the guidelines as authoritative. The United States had a practice of incorporating "understandings" in its instruments of ratification, i.e. interpretative statements designed to clarify or elaborate on rather than to change, the provisions of the agreement in question. Under the terms of guideline 1.4.4, which dealt with general policy statements, such "understandings" would not be covered by the Guide. In any event, the commentary to that guideline was not perhaps entirely clear, and the Commission might have to return to it on second reading.

87. His delegation thanked the Commission for having discussed under guideline 1.5 the question of the applicability of unilateral statements, including reservations, in the case of bilateral treaties. The United States Government had a highly developed practice in that area, but other States also made interpretative declarations in respect of bilateral treaties. It was useful in fact to include a provision on the subject in the Guide.

88. His delegation was pleased to note that, as indicated in paragraph 642 of its report, the Commission planned to take up the Special Rapporteur's sixth report, on the effects of reservations and interpretative declarations, at its fifty-third session.

89. **Mr. Chee Il-choung** (Republic of Korea), commenting on chapter V of the draft articles on State responsibility, said that his delegation was satisfied with the simplifications made by the Special Rapporteur. However, it would like to comment on some of the provisions.

90. With regard to article 30 (Countermeasures) it noted that if an act of an injured State was legitimate under international law the question of its wrongfulness clearly did not arise. There was therefore no justification for retaining article 30. But the Commission devoted a long commentary to that article, mentioning in particular sanctions and other kinds of reaction. If the Commission decided to retain draft article 30, it would have to rework the text and spell out what constituted a permissible countermeasure.

91. With respect to article 34 (Self-defence), his delegation wished to propose that its scope be expanded beyond the condition set by Article 51 of the Charter of the United Nations. Given the power of modern weaponry, States should be in a position to exercise their right of self-defence before being subjected to an attack which might destroy their military capacity. That was why his delegation proposed the insertion after "Charter of the United Nations" of the phrase "or other relevant rules of customary international law as appropriate".

92. Paragraph 3 of article 45 should be deleted in order to avoid a State committing a wrongful act being able to invoke the dignity of State as justification.

93. Paragraph 1 of article 48 imposed an obligation on the injured State to negotiate prior to taking counter-measures, which seemed unfair. It would be preferable to oblige the State committing the wrongful act to put an end to it as soon as the injured State requested it to do so. The obligation to negotiate should be incumbent upon the State committing the wrongful act.

94. Lastly, it should be stated in article 52 that the international crimes listed under article 19 should not be subject to a statute of limitations, which would bring it into line with the Convention on the Non-Applicability of

Statutory Limitations to War Crimes and Crimes against Humanity.

95. Turning to the Draft Guidelines on Reservations to Treaties, dealt with in chapter VI of the report, he said that the main problem was whether or not an interpretative declaration, and especially a conditional interpretative declaration, could be used as a reservation. It would be possible to remove the ambiguity by, for example, adding a sentence to guideline 1.2 reading: "Interpretative declaration does not add any rights and obligations to what has already been provided under the treaty."

96. Furthermore, conditional interpretative declarations should be classified as part of the regime applicable to reservations, since a State which had recourse to them subordinated its consent to a treaty by its own interpretation. Bringing conditional interpretative declarations under the regime applicable to reservations would avoid the difficulties that could arise when determining whether a conditional interpretative declaration must be considered as a reservation or as an interpretative declaration.

97. **Mr. Sun Goshun** (China) said that the draft guidelines on reservations to treaties were clear and exhaustive. However, there were a number of observations he would like to make on specific provisions.

98. Guideline 1.3 included key provisions of which the most important was guideline 1.3.3 (Formulation of a unilateral statement when a reservation is prohibited), because for a State the practice of formulating a unilateral statement when a treaty explicitly did not permit reservations created difficulties of both a theoretical and a practical nature.

99. Guideline 2.2.3 was based on the principle of good faith. As stated in the commentary, the presumption of good faith was not irrefutable. In fact, when a treaty prohibited in explicit terms any reservations, no reservation of substance was permissible, irrespective of the form in which the unilateral statement was expressed. It would therefore be necessary to have that element reflected in the text of the guideline in order to prevent any abuse.

100. As to guideline 1.2.1 (Conditional interpretative declarations), it was worth emphasizing that in legal terms such declarations were different in nature both from simple interpretative declarations and from reservations in the strict sense.

101. Guidelines 1.1.7 and 1.2.2 dealt respectively with reservations formulated jointly and interpretative declarations formulated jointly. The withdrawal of such declarations or reservations could be joint, unilateral or separate. It would therefore be useful to insert in the text of the draft provisions regarding the various different cases, as was done in article 22 of the Vienna Convention.

102. Finally, with regard to guideline 1.4 (Unilateral statements other than reservations and interpretative declarations), his delegation was of the view that it must be included in the draft because it enabled a more in-depth study to be undertaken and contributed to a better understanding of the subject.

103. *Ms. Halluar (New Zealand), Vice-Chairman, took the Chair.*

104. **Mr. Tankoano** (Niger), also speaking on the subject of the draft guidelines on reservations to treaties, said that like the delegation of France he preferred the term "Lignes directrices" to "Directives", which had a restrictive connotation.

105. As for the distinction between a reservation and an interpretative declaration, his delegation wished to point out that once it was acknowledged that there was a difference between the two concepts they could not be made subject to the same legal regime even if international practice showed that the gap separating them was a narrow one. Prudence was therefore the order of the day, and the International Law Commission should devote more in-depth consideration to the matter.

106. The treatment which the Commission had given to the issue of "reservations" to bilateral treaties met with his delegation's approval. A bilateral treaty was assumed to have been concluded and negotiated in good faith. Formulating reservations to a bilateral treaty therefore amounted to wishing to reopen the negotiations. Furthermore, neither the Vienna Convention of 1969 nor the 1978 Vienna Convention on State succession explicitly envisaged the case of reservations to bilateral treaties.

107. The issue of the validity of reservations was one of the greatest importance, as was shown by the large number of objections raised to reservations formulated by States parties to treaties. A constant policy of objection ran the risk of undermining the validity of certain reservations. It was therefore necessary to ensure that the criteria of that validity were clearly defined.

108. Finally, he welcomed the fact that the Commission had turned its attention to the question of reservations to human rights treaties. Niger had drawn its attention to the matter in 1997. Human rights treaties, which were not based on the principle of reciprocity, were beyond the jurisdiction of the Vienna regime. It was therefore advisable to fill that

legal vacuum by establishing a regime applicable to instruments of that kind.

109. *Mr. Mochochoko (Lesotho) resumed the Chair.*

110. **Mr. Ogonowski** (Poland), also speaking on chapter VI of the report, welcomed the fact that the International Law Commission had chosen the form of a guide to practice for setting out the principles applicable to reservations to treaties. It would be a useful complement to the Vienna regime, and care should be taken not to call that regime into question.

111. With regard to the definition of reservations, it was useful to distinguish between the various forms of unilateral statements and to assess their validity. His delegation welcomed the fact that guideline 1.1.1 (Object of reservations) stated that the guide also covered across-the-board reservations. In a concern for coherence, the phrase "the treaty as a whole with respect to certain specific aspects" should be added to the text of guideline 1.1 (Definitions of reservations).

112. It also seemed logical that guideline 1.1.2 should give the full list of instances in which reservations could be formulated. Consequently, a cross-reference to article 20 of the 1978 Vienna Convention should be added to the text, since notification of succession was a means of expressing consent to being bound by a treaty.

113. The temporal limitations referred to in guidelines 1.1.5 and 1.1.6 were absent from guidelines 1.1.3 and 1.1.4, and for the sake of consistency it would be preferable that they be omitted completely or included in the latter two provisions.

114. His delegation fully endorsed the Commission's definition of interpretative declarations and its underlying reasoning. It approved in particular the wording of guideline 1.4.5, which implied that some of the statements concerning modalities of implementation of a treaty at the internal level constituted reservations if they purported to affect the rights and obligations of the declaring State towards other contracting parties. In that context, it was worth mentioning that statements of that type had played an important role in enabling the implementation of treaties which were not binding at the internal level. In his delegation's view, the definition of reservations did not exclude statements intended to specify the legal effects of a treaty prior to its entry into force. The Commission should discuss that question further.

115. The Commission had concluded that statements of non-recognition constituted neither reservations nor interpretative declarations. While that was a welcome development, the Commission should address the legal effects of statements of non-recognition that excluded the application of a treaty between the declaring State and the non-recognized entity, if not under the topic of reservations then under the topic of unilateral acts of States in the context of recognition. A commentary in that respect by the Commission would be useful, for statements of non-recognition could have the same legal effect as reservations, making it all the more necessary to distinguish clearly between the two types of legal act.

116. The Commission had rightly deemed that unilateral statements in respect of bilateral treaties were not reservations but amounted to a proposal to modify the provisions of the treaty or reopen negotiations between the two States concerned. It had also considered it useful to include a guideline on interpretative declarations in respect of bilateral treaties, which Poland appreciated, being one of the States which had had occasion to resort to them: in 1997, for example, it had made an interpretative declaration on the provisions of the Concordat it had concluded with the Holy See in 1993.

117. On the subject of unilateral acts of States (chapter VIII), his delegation shared the concerns expressed by many members of the Commission regarding the second report on the topic, especially as to the definition of unilateral acts. That definition had to be elaborated very carefully. It seemed preferable to avoid using terms such as "legal", "unequivocal", "autonomous" and "notorious", which had to do with form rather than substance. To describe a unilateral act as "a unilateral statement by a State by which such State intends to produce legal effects in its relations with one or more States or international organizations and which is notified or otherwise made known to the State or organization concerned" offered a much better starting point for the discussion than the definition proposed in the second report. The verb "intends" could however be replaced by the verb "purports", in order to bring the wording into line with the definition of reservations, which themselves were unilateral acts.

118. As regarded the distinction between formal and material acts, his delegation believed that a unilateral act and a declaration were not synonymous and it would be preferable to use the term "act", since it was more general. However, it agreed with the Special Rapporteur that for the time being the Commission should focus on declarations as formal law-making acts. The rules applicable to a unilateral act would be homogeneous, but they should in any case be applicable to all unilateral acts regardless of their content.

119. There was a parallel between the rules of the law of treaties and those of the law of unilateral acts. It would therefore be appropriate for the draft articles on unilateral acts to follow more closely the corresponding rules of the Vienna Convention on the law of treaties, especially with regard to the competence to bind the State and the validity of the expression of consent. For instance, the rule set out in draft article 4, paragraph 3, proposed by the Special Rapporteur, was too broad, since under the law of treaties the capacity of the heads of diplomatic missions was limited to acts producing legal effect exclusively vis-à-vis the State to which they were accredited.

120. Likewise, draft article 7 should follow more closely the corresponding provision in the Vienna Convention. Since the consent to be bound by a treaty and the consent to a unilateral commitment were both expressions of the will of a State, it seemed logical that the same reasons for invalidity should apply to both types of statements. There was thus no reason to omit the specific restrictions on the authority to express the consent of a State.

121. Paragraph 7 of draft article 7 should, furthermore, be modeled on article 46 of the Vienna Convention of 1969. The rule should apply not to all clear violations of a fundamental rule of internal law, but only to manifest violations of a rule of internal law of fundamental importance governing the competence to conclude treaties.

122. Lastly, there was the question of unilateral acts that violated a norm of general international law or a United Nations Security Council decision adopted under Chapter VII of the Charter. An act infringing general international law would not produce legal effects if it was not accepted by the addressee States. Thus the issue was one of legal effect rather than invalidity. The same held true for a unilateral act in violation of a Security Council resolution adopted under Chapter VII of the Charter. Since most resolutions had temporary effects, the issue could also be approached from the point of view of the suspension of the legal effects of a unilateral act.

123. **Mr. Roth** (Sweden), speaking on behalf of the Nordic countries, underscored the complexity of the topic in chapter IX of the Commission's report, entitled "International liability for injurious consequences arising out of acts not prohibited by international law (Prevention of transboundary damage from hazardous activities)". It remained the view of the Nordic countries that any future international legal instrument should cover both the issue of prevention of transboundary harm and the duty to pay compensation for harm caused. The Commission had adopted in first reading 17 articles on prevention, and it should continue its work on the remainder of the draft articles without awaiting the completion of the second reading. It was time to focus on the notion of liability without having the complexity of the subject cause a delay in dealing with the question of effective compensation, which was an urgent one.

124. The Nordic countries had earlier commented on the draft text submitted by the Commission in 1996. Regarding the 17 articles already adopted, it should be stressed that not only was the notion of prevention relevant to activities involving risk, namely hazardous activities, but that it also came into play in relation to the containing and minimizing of the adverse effects arising from the normal conduct of hazardous activities and from accidents. It was therefore regrettable that article 1 (b) had been deleted from the draft articles on international liability, limiting the scope of the text to activities involving a risk of causing harm.

125. The Nordic countries were flexible as to the nature of the instrument to be adopted. One possibility could be a framework convention with some aspects of the topic dealt with in the form of guidelines or recommendations.

The meeting rose at 6.15 p.m.